IN THE HIGH COURT OF JUDICATURE AT BOMBY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 94 OF 1999

Subhash s/o Gangaram Durge ....Petitioner.

V/s

The State of Maharashtra ....Respondent.

Mr. Prakash Naik for the Petitioner.

Mr. Rajesh More, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 9th February, 2007

P.C.

1. The petitioner has challenged the judgment and order passed by the Trial Court as also the Sessions Court, convicting the petitioner for the offence punishable under section 420 of the Indian Penal Code. The Trial Court has imposed a fine of Rs 500/- and, in default, had directed that he should undergo one day's simple imprisonment till rising of the Court. The Sessions Court, however, enhanced this sentence and directed that he should deposit an amount of Rs 1500/- towards fine and, in default of payment of fine, he should undergo simple imprisonment for a period of 1 year and 9 months.

2. The prosecution case, in brief, is that the Government had introduced a scheme of paying unemployment bhatta of

Rs 100/- per month to persons who were not gainfully employed. The allegation is that though the petitioner was gainfully employed and was working as a teacher in school, he continued to accept the said unemployment grant of Rs 100/- for five months and, therefore, cheated the Government to the tune of Rs 500/-. The accused in his defence submitted that though he was working as a teacher, he was not getting any salary and, therefore, it was not a case of cheating. He has also deposited the said amount of Rs 500/- after this fact was revealed and was brought to his notice.

3. Mr. Naik, the learned Counsel appearing on behalf of the petitioner firstly submitted that the offence of cheating was not made out since the petitioner had deposited the said amount of Rs 500/- in the government treasury and, therefore, there was no question of wrongful loss caused to the Government. He further submitted that, in the alternative, Sessions Court would not have suo-motu enhanced the amount of fine to Rs 1500/- and increased the sentence in default of payment of fine to 1 year and 9 months. He submitted that the Sessions Court did not have power to enhance the sentence in appeal filed by the accused and particularly when no appeal had been preferred by the prosecution for enhancement of the sentence.

4. So far as the first submission is concerned, it is not possible to accept the submission made by the learned

Counsel appearing on behalf of the Petitioner. In the present case, the amount of Rs 500/- was deposited after the offence had been completed and the truth was discovered and notice was given to the accused. I have perused the judgment of the trial court as also appellate court. Both the Courts have held that the offence had been proved by the prosecution. I do not see any reason to interfere with the said finding.

5. However, so far as the second submission is concerned, without deciding the question about the power of the Sessions Court to suo-motu enhance the sentence awarded by the trial court, in my view, in the present case the Sessions Court erred in interfering with the sentence which was awarded by the trial court.

6. In the result, sentence awarded by the Sessions Court of increasing fine to Rs 1500/- and in default of payment of fine directing the accused to undergo simple imprisonment of 1 year and 9 months is set aside and quashed. The order of the trial court is confirmed.

7. Criminal Revision Application is disposed of.

V.M. KANADE, J.